

December 8, 2005
Revised December 15, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REVISED¹ REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L04P0025**
Proposed Ordinance No. **2005-0362**

KIRKWOOD
Preliminary Plat Application

Location: The south side of Northeast 124th Street between 84th Avenue Northeast
and 86th Avenue Northeast

Applicant: Bennett Development, Inc.
represented by **Nancy Bainbridge Rogers**
Cairncross & Hempelmann, P.S.
524 Second Ave., #500
Seattle, WA 98104-2323
Telephone: (206) 587-0700
Facsimile: (206) 587-2308

King County: Department of Development and Environmental Services,
represented by **Kim Claussen**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7167
Facsimile: (206) 296-7051

SUMMARY OF DECISION/RECOMMENDATIONS:

Department's Preliminary Recommendation:	Approve with conditions
Department's Final Recommendation:	Approve with revised conditions
Examiner's Decision:	Approve with revised conditions

EXAMINER PROCEEDINGS:

Hearing Opened:	September 15, 2005
Hearing Continued to:	September 29 and November 15, 2005
Hearing Closed:	November 15, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

¹ The revisions consist of corrections of typographical errors in Finding 7, line 5, and Finding 9, line 2.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **General Information:**

Owner/Developer: Bennett Development Inc.
Attn. Bob Ehrlichman
12011 NE 1st St., Suite 201
Bellevue, WA 98005
(425) 709-6508

Engineer: The Blueline Group
25 Central Way, Suite 400
Kirkland, WA 98033
(425) 216-4051

STR: 30-26-5
Location: Generally on the south side of NE 124th St. between 84th Ave NE and 86th Ave NE
Zoning: R-8
Acreage: 2.29 acres
Number of Lots: 17
Density: Approximately 7.42 units per acre
Lot Size: Ranges from 3,929 to 5,523 sq. ft.
Proposed Use: Single Family Detached Dwellings
Sewage Disposal: Northshore Utility District
Water Supply: Northshore Utility District
Fire District: King County Fire District No. 41
School District: Lake Washington No. 414

Application Completeness Date: November 24, 2004

2. Except as modified herein, the facts set forth in the DDES reports to the Examiner and the DDES and King County Department of Transportation testimony are found to be correct and are incorporated herein by reference.
3. The subject property lies in the unincorporated Finn Hill area east of Juanita Drive and west of the City of Kirkland. It is rectangular in shape and 2.29 acres in area,² and lies in the southeast corner of a 5-way intersection where 84th Avenue Northeast and Northeast 124th Street cross at right angles, and Northeast 123rd Street enters the intersection from the southwest on a diagonal. The intersection is thus complex and somewhat awkward. The site's terrain slopes gradually to the west toward 84th Avenue Northeast. No regulated sensitive areas are identified as present onsite; the site is vegetated with primarily pasture grass with scattered mixed species trees and brush. The surrounding area is undergoing denser suburbanization, with the surrounding area consisting primarily of detached single-family dwellings on lots ranging from approximately 10,000 square feet to five acres.

² A separate property abutting to the east (occupying the southwest quadrant of the intersection of Northeast 124th Street and 86th Avenue Northeast,) which contains an existing residence and is approximately two-thirds of an acre in size, was deleted from the subdivision proposal during administrative review.

4. The Applicant proposes subdivision of the property into 17 lots for detached single-family residential development. The lot sizes would range from 3,929 square feet to 5,523 square feet. Access to the lots would be provided by extension of public roads into the site from both 84th Avenue Northeast and Northeast 124th Street, with the east-west road from 84th Avenue Northeast running to the east property line to terminate in a road stub (to provide for possible future extension easterly), and the entry from Northeast 124th Street extending southerly to intersect in a T with the east-west interior road. In the southwest corner of the parcel, a drainage detention/recreation space tract would be improved with drainage detention and water quality facilities in an underground vault and recreation space and amenities on the surface.
5. Concerns over development traffic adversely affecting the operation of the 5-way intersection at the northwest corner of the site and the safety and free flow of 84th Avenue Northeast led to agreement between the Applicant and County staff on the installation and specifications of a C-curb turning movement restrictor in the centerline of 84th Avenue Northeast. With the installation of that restrictor, the 84th Avenue Northeast entry of the subdivision will be restricted to right-in/right-out only. The installation of the restrictor and necessary accompanying road widening will provide for safe operation of emergency vehicles along 84th Avenue Northeast in the subject location and through the 5-way intersection, as well as allow for sufficient turning radius for large, long-wheelbase vehicles turning from northeast-bound Northeast 123rd Street southbound onto 84th Avenue Northeast.
6. Sight distance at the formerly proposed entry onto Northeast 124th Street was a concern which needed to be addressed through the several continuances of the hearing in this matter, culminating in a revised plat layout and the approval of a road standards variance by KCDOT, as well as agreement on relevant conditions of approval. The redesign allows for proper alignment of the proposed entry with a joint-use driveway across Northeast 124th Street as well as provision of sufficient sight distance, with the meeting of the two somewhat conflicting objectives facilitated by the granting of the road variance, which provides for a sufficiency of sight distance based on industry standards and is concluded to provide sufficient traffic safety and convenience.
7. The appropriate level of drainage improvement standards is a contested issue in this case. The Applicant's engineering consultant argues that the general area is designated on a basin-wide basis as a Level 1 drainage area with no problems identified, that after having walked the downstream watercourse fed by the property's runoff (Tributary 0229A to Lake Washington) no severe erosion was noted, and also that any erosion problems are greater than one-quarter mile distant (the standard extent of downstream review, absent special circumstances or problems which compel assessment further afield). The Applicant asserts that previous downstream erosion problems are stable now and that there have not been any recent changes to the erosion status of the downstream watercourse.
8. DDES disputes the Applicant's contentions and notes that significant erosion problems have been noted in the downstream watercourse in the last two decades. Downstream erosion was particularly documented as significant in 1996, with significant downcutting of the watercourse west of Juanita Drive (in some places amounting to 6-8 feet of vertical downcutting leaving vertical slopes from erosion). For this case, DDES has also walked the full downstream watercourse except for portions which were inaccessible and has provided evidence that just east of Juanita Drive at a restaurant development in the southeast corner of Juanita Drive and Northeast 122nd Place, stream erosion has increased its undercutting of a building foundation, and testified that erosion west of Juanita Drive is worse.

9. DDES notes that it has discretionary authority under the applicable 1998 Surface Water Design Manual (SWDM) to extend its downstream analysis beyond one-quarter mile when downstream problems indicate that extended analysis is appropriate. DDES also asserts that a site-specific downstream analysis is a requirement of the SWDM, and that simple reliance on basin-wide classifications of problem levels is not sufficiently particularized to provide adequate and specific analysis of a development's potential drainage impacts. Based on its observations, review and analysis, DDES concludes that allowing SWDM Level 1 flow control specifications in this development would aggravate downstream erosion problems, and that the higher standard of Level 2 flow control (which in part requires a lower drainage release rate from the development's detention facilities) pursuant to SWDM Core Requirement 2 is therefore necessary to sufficiently mitigate the development's drainage impacts.
10. The preponderance of the evidence in the record is persuasive that DDES's position and conclusions are correct with regard to the drainage impacts of the development, the status of downstream erosion and the need for Level 2 flow control as specified in the 1998 SWDM. The Examiner adopts such analysis and conclusions as his own in this decision. Level 2 flow control has been shown by the record to be necessary so that the proposed subdivision complies with Chapter 9.04 KCC and KCC 19A.08.060, and makes "appropriate provisions" for drainage as required by state subdivision law, RCW 58.17.110, and counterpart King County Code provisions in KCC 20.24.195.
11. Resident public school children will walk to their respective schools from the development, except that high school students will be bussed. Safe walking conditions are in place off site and will be provided within the subdivision and on its frontage so that sufficient school pedestrian safety is provided.
12. The property is located in the Northshore Community Planning Area. Chapter 21A.38 KCC special overlay requirement SO-220 (Significant Tree Overlay) applies to this site. The Significant Tree Overlay requires the development to retain a percentage of the significant trees onsite. To implement KCC 21A.38.230, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat.

CONCLUSIONS:

1. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the R-8 zone.
2. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
3. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
4. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on November 8, 2005, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

DECISION:

The preliminary plat of the *Kirkwood* subdivision, as revised and received November 8, 2005, is approved subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-8 zone classification. All lots shall meet the minimum dimensional requirements of the R-8 zone classification or shall be shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environment Services.

Any/all plat boundary discrepancy shall be resolved to the satisfaction of DDES prior to the submittal of the final plat documents. As used in this condition, "discrepancy" is a boundary hiatus, an overlapping boundary or a physical appurtenance which indicates an encroachment, lines of possession or a conflict of title.

4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
5. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the fire flow standards and specifications of Chapter 17.08 of the King County Code.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in K.C.C. 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual

lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."

7. The drainage facilities shall meet the requirements of the 1998 King County Surface Water Design Manual (KCSWDM). Level 2 Flow Control is required to address downstream erosion problems in Tributary 0229A according to Core Requirement 2 of the KCSWDM.
8. The following road improvements are required to be constructed according to the 1993 King County Road Standards(KCRS):
 - a. Roads A and B shall be improved at a minimum to the urban subaccess street standard.
 - b. FRONTAGE: The frontage along NE 124th Street shall be improved to the urban neighborhood collector standard. Provisions shall be shown on the engineering plans for location of the road crown per the standard. A full width overlay may be required according to Section 4.01F of the KCRS.
 - c. FRONTAGE: The frontage along 84th Ave NE shall be improved to the urban neighborhood collector standard (east side).

A C-Curb installation is required along 84th Ave NE in general conformance with the Conceptual Drainage and Utility Plan received November 8, 2005; unless otherwise approved by DDES. The C-Curb installation shall include a minimum 20 feet of pavement on each side. Plans for this improvement shall be reviewed by KCDOT and DDES with the engineering plan review.
 - d. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.08 of the KCRS.
 - e. A Road Variance, L05V0081 is approved for this site. All conditions of approval for this variance shall be met prior to approval of the engineering plans.
9. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
10. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at the final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
11. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.

12. There shall be no direct vehicular access to or from 84th Avenue Northeast and Northeast 124th Street from those lots which abut it. A note to this effect shall appear on the engineering plans and the final plat.
13. Suitable recreation space shall be provided consistent with the requirements of K.C.C. 21A.14.180 and K.C.C. 21A. 14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. A detailed recreation space plan (i.e., location, area calculations, dimensions, landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of engineering plans. Fencing shall be required adjacent to 84th Avenue Northeast.
 - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
14. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
15. Street trees shall be provided as follows (per KCRS 5.03 and K.C.C. 21A.16.050):
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the county has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
 - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The applicant shall contact Metro Service Planning at (206) 684-1622 to determine if 84th Ave NE or NE 124th St is on a bus route. If so, the street tree plan shall also be reviewed by Metro.
 - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and

inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

16. To implement K.C.C. 21A.38.230 which applies to the site, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention plan (and engineering plans) shall be consistent with the requirements of K.C.C. 21A.38.230, as well as the conceptual tree retention plan. No clearing of the subject property is permitted until the final tree retention plan is approved by LUSD. Flagging and temporary fencing of trees to be retained shall be provided, consistent with K.C.C. 21A.38.230.B.4. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas around preserved trees, except for grading work permitted pursuant to K.C.C. 21A.38.230.B.4.d.(2).

A note shall be placed on the final plat indicating that the trees shown to be retained on the tree retention plan shall be maintained by the future owners of the proposed lots, consistent with K.C.C. 21A.38.230.B.6. (Note that the tree retention plan shall be included as part of the final engineering plans for the subject plat.)

ORDERED this 8th day of December, 2005.

Revised December 15, 2005.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 15th day of December, 2005, to the following parties and interested persons of record:

Bennett Devel., Inc.
Attn: Bob Ehrlichman
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Bellevue WA 98005

Sonia Binek
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Kirkland WA 98034

Mark V. Evans
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Sammamish WA 98075

Fader
11722 - 84th Ave. NE
Kirkland WA 98034

The Blueline Group
Attn: Geoff Tamble
25 Central Way, #400
Kirkland WA 98033

JoAnne Hedou
12514 - 87th Pl. NE
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NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before December 22, 2005***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before December 29, 2005***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE SEPTEMBER 15 AND 29 AND NOVEMBER 15, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L04P0025.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Kim Claussen, Bruce Whittaker and Kristen Langley, representing the Department; Nancy Bainbridge-Rogers representing the Appellant, and Jeff Schramm, Geoff Tample, and Bob Ehrlichman.

The following Exhibits were offered and entered into the record:

- | | |
|---------------|---|
| Exhibit No. 1 | Department of Development and Environmental Services File No. L04P0025 |
| Exhibit No. 2 | Department of Development and Environmental Services Preliminary report, dated September 15, 2005. |
| Exhibit No. 3 | Application for Land Use Permits received November 24, 2004 |
| Exhibit No. 4 | SEPA Checklist received November 24, 2004 |
| Exhibit No. 5 | Determination of Non-significance issued August 19, 2005 |
| Exhibit No. 6 | Affidavit of Posting indicating a posting date of January 6, 2005; received by DDES on January 10, 2005 |
| Exhibit No. 7 | Preliminary plat map dated 6/10/05 - revision |

- Exhibit No. 8 Conceptual Drainage & Utility Plan dated 7/21/05 - revision.
- Exhibit No. 9 Level 1 Downstream Analysis by The BlueLine Group dated Nov. 18, 2004.
- Exhibit No. 10 Revised Level 1 Downstream Analysis by BlueLine Group dated June 10, 2005
- Exhibit No. 11 Assessor's maps (4) – NW & SW 30-26-5; NE & SE 25-26-04
- Exhibit No. 12 Preliminary Recreation Space Plan by GHA Landscape Arch. received June 13, 2005
- Exhibit No. 13 Traffic Assessment by Transportation Engineering NW dated Nov. 23, 2004
- Exhibit No. 14 Sight Distance Measurements by Mead Gilman & Assoc. dated Nov. 22, 2004
- Exhibit No. 15 Email from Steve Foley/WLRD dated Sept. 12, 2005
- Exhibit No. 16 Photographs (4 color copies) taken by Bruce Whittaker on 9/07/05
- Exhibit No. 17 KC WLRD Drainage Investigation Report for complaint no. 98-0115, closed 2/18/98
- Exhibit No. 18 Basin Reconnaissance Program, Program Summary, pages C-3 through C-11 with cover sheet and map
- Exhibit No. 19 Preliminary plat map dated 9/15/05
- Exhibit No. 20 Conceptual Drainage & Utility Plan dated 9/15/05 - revision
- Exhibit No. 21 Letter from Nancy Bainbridge Rogers with enclosures (3), dated September 15, 2005
- Exhibit No. 22 Roadway diagram showing proposed C-curb, dated 9/12/05
- Exhibit No. 23 Roadway diagram depicting how proposal would prevent U-turns, dated 9/12/05
- Exhibit No. 24 Preliminary plat map, dated 9/22/05
- Exhibit No. 25 Conceptual Drainage & Utility Plan dated 9/22/05
- Exhibit No. 26 Technical memo from Transportation Engineering NorthWest, LLC, dated 9/26/04
- Exhibit No. 27 Aerial photograph with annotation re: walkways, dated 9/29/05
- Exhibit No. 28 Email chain between Nancy Rogers, Kim Claussen and Paul Eichhorn re: Bennett Kirkwood Plat
- Exhibit No. 29 New conditions 8.f and 8.g
- Exhibit No. 30 Diagrams (2) re: fire truck movement onto site, dated 9/19/05
- Exhibit No. 31 Email chain between Nancy Rogers, Kim Claussen and Kristen Langley dated 9/26/05
- Exhibit No. 32 Email from Bruce Whittaker re: intersection spacing – private vs. public, dated September 27, 2005
- Exhibit No. 33 Revised preliminary plat, received November 8, 2005
- Exhibit No. 34 Revised conceptual drainage and utility plan, received November 8, 2005
- Exhibit No. 35 Letter re: road variance no. L05V0081, dated November 8, 2005; with attached November 7, 2005, memo re: same
- Exhibit No. 36 Revised road conditions (per plan received November 8, 2005)

PTD:ms

L04P0025 RPT2